

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**October 16, 2012**

**The Rhode Island Ethics Commission held its 13th meeting of 2012 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, October 16, 2012, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair Frederick K. Butler**

**Deborah M. Cerullo SSND, Vice Chair Mark B. Heffner**

**John D. Lynch, Jr. James V. Murray**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:06 a.m. the Chair opened the meeting. The first order of business was the approval of minutes of the Open Session held on**

**September 11, 2012. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Butler, it was**

**VOTED: To approve minutes of the Open Session held on September 11, 2012.**

**AYES: James V. Murray; Deborah M. Cerullo; Mark B. Heffner; Frederick K. Butler; Ross Cheit.**

**ABSTENTIONS: John D. Lynch, Jr.**

**The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of:**

**Richard Youngken, a member of the South Kingstown Historic District Commission, requesting an advisory opinion regarding whether the Code of Ethics prohibits him from being hired by the Town of South Kingstown to create a guidebook for homeowners in the Town's historic districts.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present, along with Doug McLean, Senior Planner for the Town of South Kingstown. Staff**

**Attorney Stewart proposed two amendments to the draft opinion. The first was in the last paragraph on page 2, which should read that the “Town,” instead of the “HDC,” was awarded the grant. The second was in the fourth paragraph on page 4, which should read at the end of the first sentence that the request for proposals (“RFP”) was circulated by “the Town for the benefit of his own board.”**

**In response to Chair Cheit, Mr. McLean responded that the planning department did not receive any responses from the other four (4) historic preservation planners, all located in Rhode Island, who were sent the RFP. He stated that the Town received inquiries from a local architectural firm and a consulting firm, who were registered vendors on the Municipal Notification Bidding System. However, those vendors did not submit bids. He further stated that only a small group of individuals are qualified for this project and those individuals may not have been available during the time of the contract.**

**In response to Commissioner Butler, Mr. McLean responded that the selection of the Petitioner for this project was not a forgone conclusion. He informed that through its August meeting, the HDC was working under the assumption that the Petitioner was not eligible for this project. He stated that the Petitioner consulted with the Town’s legal counsel as to his eligibility to apply for the RFP during the week the RFP was released. The Petitioner stated that he only decided to apply after speaking with legal counsel.**

**In response to Chair Cheit, Staff Attorney Stewart stated that she did not speak with Town Legal Counsel, but that she was contacted by Mr. McLean the day before the RFP deadline. She stated that at the time she informed Mr. McLean that there were other issues here, not foreseen by the Town's legal counsel, and she advised him to have the Petitioner seek an advisory opinion. Upon motion made by Commissioner Butler and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To issue an advisory opinion, as amended and attached hereto, to Richard Youngken, a member of the South Kingstown Historic District Commission.**

**The next advisory opinion was that of:**

**Robert Carpenter, Superintendent of State Piers for the Rhode Island Department of Environmental Management ("DEM"), requesting an advisory opinion regarding whether the Code of Ethics restricts his wife from entering into a lease with DEM.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was present. In response to Commissioner Cerullo, Staff Attorney Stewart stated that this was a private sale; the seller finds the buyer and refers the buyer to DEM regarding the lease of the underlying land. The Petitioner responded**

that he was not aware of any other potential buyers. He stated that his wife saw the gone out of business sign and inquired with the owner. He added that Galilee Grocery is a private building located on state owned land.

Staff Attorney Stewart stated that the Petitioner's wife would not be negotiating with DEM because the lease terms are standardized. She explained that the discussions between DEM and the Petitioner's wife will be more about looking at the proposed use of the property and whether it supports the fishing industry. In response to Commissioner Murray, Staff Attorney Stewart replied that if issues with the lease arise DEM will communicate directly with the Petitioner's wife. The Petitioner stated that the current owner's lease is still in effect and is still accruing. Staff Attorney Stewart added that the terms of the sale will bring the lease payments up to date. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Cerullo, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Robert Carpenter, Superintendent of State Piers for Rhode Island Department of Environmental Management.

The next advisory opinion was that of:

Stuart B. Hardy, a member of the Tiverton Planning Board, requesting an advisory opinion as to whether the Code of Ethics prohibits him

from participating in the Planning Board's consideration of a proposed amendment to the Tiverton Zoning Ordinance as requested by the Tiverton Yacht Club, given that he is a member of the Board of Directors of the Tiverton Yacht Club.

Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. In response to Chair Cheit, Staff Attorney Stewart informed that the following advisory opinion was requested in order to determine who has a conflict because of potential quorum issues. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Murray, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Stuart B. Hardy, a member of the Tiverton Planning Board.

The final advisory opinion was that of:

Stephen J. Hughes, a member and Chairman of the Tiverton Planning Board, requesting an advisory opinion as to whether the Code of Ethics prohibits him from participating in the Planning Board's consideration of a proposed amendment to the Tiverton Zoning Ordinance as requested by the Tiverton Yacht Club, given that he is an officer of the Tiverton Yacht Club.

Staff Attorney Stewart presented the Commission Staff

recommendation. The Petitioner was not present. Upon motion made by Commissioner Butler and duly seconded by Commissioner Cerullo, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Stephen J. Hughes, a member of the Tiverton Planning Board.

The next order of business was a public hearing regarding adoption of Regulation 36-14-17009 – Out-of-state travel. The hearing was stenographically recorded and a transcript of the proceeding is available at the Commission Offices.

Staff Attorney Gramitt informed that this hearing was part of rulemaking as required by the Administrative Procedures Act. He stated that this petition originated from Common Cause of Rhode Island and the Commission has discussed this matter on multiple occasions over the last several months. He stated that the notice of rulemaking was posted over thirty (30) days prior to this meeting on the Secretary of State's website and the Ethics Commission's website, in addition to being emailed to all thirty-nine (39) cities and towns and the Ethics Commission's email distribution list. The notice was also sent to the Governor's Legal Counsel and the Small Business Advocate at the Economic Development Corporation, who responded that this regulation had no impact on small business. He further informed that the Commission received written comment in the form of thirty-six (36) emails, which were all in support of

**adopting the Regulation.**

**The Commission opened up the floor to public comment, noting that two (2) people signed up to speak. John Marion, on behalf of Common Cause of Rhode Island, spoke in favor of adopting this regulation. Margaret Kane, on behalf of Operation Clean Government, also spoke in favor of adopting this regulation. Chair Cheit asked if anyone else was there to speak and there was no response.**

**During the public hearing, the Commission acknowledged receipt that morning of an additional comment via email, which was considered with the rest of the public comment and included in the public record.**

**Legal Counsel Alves stated that the public comment portion had concluded, with no one else interested in speaking. He advised the Commission that it could adopt one of the options; adopt none of the options; or take the matter under advisement. Discussion ensued.**

**The Commissioners discussed the monetary threshold and came to an agreement that they preferred Option B with the higher, \$250 threshold. There was also discussion of the exception for a gift from a family member, noting that it did not make sense that a family member would pay for your travel expenses because you are employed by the state. After this discussion, Chair Cheit directed staff to delete “person within his or her family or a” from line 6 of**



## **Option B.**

**The Commissioners discussed the purpose of this Regulation, whether it was to disclose the travel perks or the influence of the third party paying for the travel expenses. It was concluded that the purpose of the regulation was to make clear any potential influence on public officials and to be able to gauge the scope of this issue after disclosures have been made.**

**There was also discussion regarding a previous list of factors considered with a prior draft of this regulation that provided examples of circumstances where it was more likely than not that the travel would not have been provided but for the official's or employee's public office or position. The Commission discussed whether this illustrative list should be included in the text of the regulations; the instructions for filing financial disclosure statements, both online and by paper; in the first advisory opinion received on this topic; or through this issuance of a General Commission Advisory ("GCA"). A consensus was reached and Chair Cheit directed Staff to take Option B, strike the language relating to the family exception and add the prior list of illustrative examples to the Regulation as subsection (b). Given the changes to the proposed Regulation, Legal Counsel Alves advised the Commission to re-notice this new draft for another thirty (30) day comment period. Chair Cheit directed staff to re-notice the Regulation and schedule it for the meeting after the thirty (30) days has passed.**

**At 10:40 a.m. the Commission recessed for a short break. The Commission returned from break at approximately 10:46 a.m.**

**The next order of business was the Director's Report. Executive Director Willever reported that there are twenty-two (22) complaints pending, seventeen (17) of which are non-filing complaints. He stated that there are five (5) advisory opinions and one (1) litigation matter pending. He also stated that thirteen (13) APRA requests were granted since the last meeting.**

**The next order of business was Election of Officers. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To elect Ross Cheit as Chairperson.**

**ABSTENTION: Ross Cheit**

**Upon motion made by Commissioner Murray and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To elect Deborah M. Cerullo as Vice Chairperson.**

**ABSTENTION: Deborah M. Cerullo.**

**Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To elect John D. Lynch, Jr. as Secretary.**

**ABSTENTION: John D. Lynch, Jr.**

**At approximately 10:50 a.m., upon motion made by Commissioner Cerullo and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

**a) Motion to approve minutes of Executive Session held on September 11, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**b) Discussion regarding status of pending litigation: Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC11-6938, pursuant to R.I. Gen. Laws § 42-46-5(a)(2).**

**The Commission reconvened in Open Session at approximately 10:52 a.m.**

**The next order of business was a motion to seal the minutes of the October 16, 2012 Executive Session. Upon motion made by**

**Commissioner Murray and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To seal the minutes of the October 16, 2012 Executive Session.**

**Chair Cheit reported that the Commission took the following actions in Executive Session:**

**1. Voted to approve the minutes of the Executive Session held on September 11, 2012.**

**[Reporter's Note – The vote was as follows:**

**AYES: James V. Murray; Frederick K. Butler; Deborah M. Cerullo; Mark B. Heffner Ross Cheit.**

**ABSTENTIONS: John D. Lynch, Jr.]**

**2. Received a brief update in the litigation matter of Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC11-6938.**

**The next order of business was New Business and general comments from the Commission. There being none, at 10:54 a.m., upon motion made and duly seconded, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

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**John D. Lynch, Jr.**

**Secretary**